



OWENSBORO PUBLIC SCHOOLS

"A Tradition of Excellence Since 1871"

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Larry Vick, Ed.D.
Superintendent
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June 9, 2003

Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

Re: Appeal and/or Waiver Request by
Owensboro Independent School District to
Universal Service Administrative Company
Decision on Appeal Dated April 14, 2003;
CC Docket Nos. 96-45 and 97-21

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| Contact Name: | Ron Milliner |
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|-------------------------------|---|
| Form 471 Application No.: | 241629 |
| Funding Year: | 07/01/2001 - 06/30/2002 |
| Document Date: initial filing | 01/18/2001 |
| initial appeal | 10/30/2002 |
| Billed Entity No.: | 128995 |
| Funding Request Nos.: | 574677, 574726, 574750, 574781, 574842, 574873, 574924, 574972, 575048, 575095, 575129, 637344, 637450, 637508, 637595, 637677 |

Dear Sir or Madam:

This letter and its enclosures are being submitted as the appeal of the Owensboro Independent School District (the "District") to the Administrator's Decision on Appeal - Funding Year 2001-2002 dated April 14, 2003, attached hereto as Exhibit "A" (the "Administrator's Decision"), which denied the District's appeal of an earlier finding that the District's Form 471 application had not been timely filed — i.e. on January 19, 2001, instead of the required January 18, 2001. The District disagreed with that initial finding, and continues to disagree with the same finding on appeal. By this appeal we are asking the Commission to review and

overturn that denial of funding, which denial is based on documentary evidence that is indisputably ambiguous, and on an improper reliance on this Commission's decision in the South Barber United School District case.

In the alternative, we would request that the Commission grant our District a waiver in regard to the subject filing deadline issue. In the Administrator's Decision the finding adverse to our District was said to be based upon, and consistent with, this Commission's decision in the therein cited South Barber United School District proceeding. We respectfully take issue with that apparently controlling portion of the Administrator's Decision.

The instant factual situation is not comparable with that faced by your Commission when it rendered its South Barber decision. In that matter there was no ambiguity, but merely an admitted failure by South Barber to submit perhaps the most material portion of the application materials by the filing deadline — and no reasonable excuse for failing to do so. In the instant case, our District makes no such concession, and would not be speaking candidly with the Commission if it did so. The documentation leading to the January 18 versus January 19 postmark issue creates an ambiguity that leaves us with little alternative other than to speak with those involved at the time. Those individuals — i.e. Mary Ann Payton, the then District Technology Coordinator, who has subsequently left our district, but whose Affidavit is attached hereto as Exhibit "F", and Patrick Osborne, owner of Packages Plus — are adamant in insisting the subject application package was delivered to Packages Plus for mailing on January 18, 2001, and in turn delivered to the United States Post Office later that same evening. The cash receipt discovered in the District's file contains an illegible date that Ms. Payton covered with scotch tape for preservation purposes, as further reflected by her handwritten note thereon reflecting the importance of the January 18, 2001, mailing date (See Exhibits "E" and "F" attached hereto). Unfortunately, the chemical effect of the covering tape, which was meant to be protective, has completely obliterated the crucial receipt date. Otherwise this matter would not be before the Commission.

This ambiguity has resulted in the Administrator's Decision adverse to the funding interests of our District. In the event the Commission affirms that previous finding, we would ask that the Commission grant our request for a waiver for what will have been found to be a missed filing deadline. We understand that such waivers are rarely granted; and then only under special circumstances where a deviation from the rules would serve the public interest. Our district would submit that the instant situation could not more closely depict the "special circumstances" deemed appropriate for such a waiver.

Our District serves a high free and reduced lunch population that is both challenging and expensive to educate. Funding such as that herein discussed is crucial to our ability to adequately serve the needs of our students. We are confident the Commission is cognizant of the budget difficulties being faced by most school districts and governmental agencies. Unfortunately, due to a change of administration in the Technology Department in our District, the fact that the subject Form 471 funding application had not been acted on by the Universal Service Administrative Company (USAC) was not timely discovered. This is not to say that all of the funding applied for was budgeted and spent. However, it is to say that considerable programming was continued, and the absence of any response to the January 18-19, 2001, application for year 2001-2002 funding was not discovered until the fall of 2002.

Enclosed as exhibits to this appeal and/or request for waiver are the following:

Exhibit A: April 14, 2003, denial letter from Universal Service Administrative Company, Schools and Libraries Division containing the Administrator's Decision on Appeal - Funding Year 2001 - 2002 that is the subject of this appeal and/or request for waiver.

Exhibit B: Form 471 Application documents originally submitted on January 18-19, 2001.

Exhibit C: District's appeal letter to Schools and Libraries Division dated October 30, 2002.

Exhibit D: Packages Plus letter dated March 12, 2003.

Exhibit E: Cash receipt from Packages Plus with obliterated date, but handwritten confirmation as to same.

Exhibit F: Affidavit of Mary Ann Payton.

The technology funding available through the Schools and Libraries Division being sought by our District is critically important to school districts, and perhaps particularly so for those serving populations like that we serve. We are convinced our Form 471 filing met all program filing deadlines and other requirements, and has heretofore been improperly denied due solely to an ambiguity created by certain postmark documentation. The United States Post Office refuses to issue a letter verifying a mailing on either January 18 or 19, 2001. Nevertheless, there can be little argument but that for the Commission to grant our appeal, or at least grant our waiver request, will be in the best interest of the public. We are confident the Commission will concur with that position.

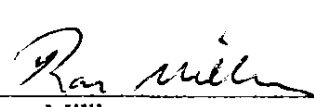
Due to the critical importance of the subject funding to our District, we would welcome the opportunity to have a representative of our District appear personally at a time and place of the Commission's choosing to discuss and explain any of the enclosed, and to let the Commission examine the original, albeit illegible, Package Plus cash receipt that is perhaps most directly connected to the matter at issue.

Respectfully submitted this 9th day of June, 2003.

Owensboro Independent School District

By


Larry D. Vick, Superintendent


Ron Milliner,
District Technology Director

STATE OF KENTUCKY

COUNTY OF DAVIESS

Subscribed And Sworn To before me by Larry D. Vick, Superintendent, and Ron Milliner, District Technology Director, of the Owensboro Independent School District, who stated that the statements contained in the preceding three (3) pages and all Exhibits attached are true and accurate as they verily believe. This 9th day of June, 2003.

Carol Clark

Notary Public, State-At-Large

My commission expires: 10-15-06

DOCUMENT AVAILABLE
IN THE LEAD
DOCKET/RULEMAKING

SEE DOCKET NO. 96-45 FOR THE DOCUMENT.